

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson

10:00 a.m./~~pm~~ on February 11, 1983 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Burke, Feleciano, Gaar,
Hein, Mulich, Steineger and Werts.

Committee staff present: Mary Torrence, Revisor of Statutes
Mike Heim, Legislative Research Department
Mark Burghart, Legislative Research Department

Conferees appearing before the committee:

Marvin Thompson, Kansas Judicial Council
Gerald L. Goodell, Kansas Savings and Loan League

Senate Bill 91 - Redemption of real property.

Senator Pomeroy explained this committee had several bills last year dealing with mortgage redemption, and it referred the matter to the Kansas Judicial Council. The Council accepted that study and assigned it to the Civil Law Advisory Committee of the Council, which is chaired by Marvin Thompson.

Marvin Thompson appeared in support of the bill. He presented background information. He said it is very universal that the amount of the judgment is paid by the mortgage holder, but in the past few years with the changing of the interest rates, it is not as universal as it used to be. They think it is desirable that the purchaser at the forfeiture sale be free from the claims of other lien creditors. Mr. Thompson explained this bill, with one exception, is the current law in the state of Kansas, and the study committee believes it continues to provide the desirable results to be accomplished by mortgage redemption statutes. He explained the basic change in the bill is subsection (o) by striking the words "date of judgment" and inserting the words "petition is filed". He explained why the suggested change is needed. Mr. Thompson pointed out the only other change appears on line 149, which was requested by the clerks of the court, that the clerk not be required to give a receipt when the redemption is made and is entered in a separate record. Committee discussion with him followed.

Gerry Goodell appeared in support of the bill. He explained basically the purpose of this bill is to eliminate an unnecessary step to be done in mortgage foreclosure. A copy of his remarks is attached (See Attachment #1).

Jim Clark handed out a copy of the Colorado Organized Crime Control Act that pertains to SB 113 (See Attachment #2).

The chairman read the printed testimony of Malinda Irvin concerning SB 114 (See Attachment #3).

Following committee discussion, Senator Steineger moved that Senate Bill 192 be re-referred; Senator Mulich seconded the motion. Following additional discussion, the motion passed to re-refer the bill to Federal and State Affairs Committee.

The meeting adjourned.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Jim Holt	Valley Center, Ks	KCU
Tom Wippler	Topeka	KSU
General Goodell	Topeka	KSYC League
Jim Turner	Topeka	KSL
Marv. Throckm	Russell	Judicial Council
J. E. Nearell	Topeka	Judicial Council
L. Humes	Lawrence	Steiniger
Janet Stubbs	Topeka	NBAK
Jim Masz	"	KBA
John Orr	"	KCOA
B. Crenshaw	Topeka	NKFD
Phil Jennings	Topeka	Ks. Trial Lawyers
Natalie Joubert	Leawood	
Donna Knoll	Mission	Shawnee Mission Public Schools



JAMES R. TURNER
PRESIDENT

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2-11-83
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February 9, 1983

TO: SENATE JUDICIARY COMMITTEE
FROM: KANSAS SAVINGS AND LOAN LEAGUE
RE: SENATE BILL NO. 91

The Kansas Savings and Loan League appreciates the opportunity to appear before the Senate Judiciary Committee on Senate Bill No. 91.

A similar bill was sponsored by the Kansas Savings and Loan League during the 1982 session and referred to the Judicial Council for further study. This bill amends K.S.A. 1982 Supp. 60-2414. The principal change is found in subparagraph (1) relating to second sales by junior creditors. As amended, all junior creditors who file after the foreclosure petition is filed are barred from a second sale even though they are not joined as a party. This will eliminate the former need to check title twice to be certain all junior creditors are joined who filed after the petition was filed and before the Journal Entry of Judgment. This will effectively reverse the recent Kansas Supreme Court Decision: McGraw v. Premium Finance Co. of Mo. 7 Kan. App. 2d 32 (637 P2d 472 (1981)).

G.L.G.

GLG:bw

REPRESENTING THE SAVINGS AND LOAN BUSINESS OF KANSAS
"MEETING HOUSING NEEDS AND HUMAN NEEDS"

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J. Clark

10. Suppression of evidence

Where inspection of defendant's premises was conducted following issuance of inspection warrant under this section, inspection was limited to administrative inspection and was conducted in accordance with this section, any matters revealed by such inspection were not subject to suppression in criminal proceeding. U. S. v. Prendergast, D.C.Pa.1977, 436 F.Supp. 931, affirmed 585 F.2d 60.

Where subsequent statements made by defendant were directly related to information gathered by Drug Enforcement Agency compliance officers as result of illegal search of defendant's pharmacy, defendant was entitled to suppression of such statements. U. S. v. Enserro, 1st N.Y.1975, 401 F.Supp. 460.

§ 881. Forfeitures

Property subject

(a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

- (1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this subchapter.
- (2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this subchapter.
- (3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).
- (4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2), except that—
 - (A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this subchapter or subchapter II of this chapter; and
 - (B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State.
- (5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter.
- (6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any

person in exchange for a this subchapter, all proceeds, all moneys, negotiable instruments, intended to be used to facilitate, except that no property shall be to the extent of the interest or omission established by or omitted without the knowledge

Seizure pursuant to Admiralty

(b) Any property subject to this subchapter may be seized issued pursuant to the Supplemental and Maritime Claims by any court having jurisdiction over the property. The process may be made when—

- (1) the seizure is in accordance with a search warrant or an inspection warrant;
- (2) the property subject to seizure is in the possession of a person prior judgment in favor of the Government or forfeiture proceedings;
- (3) the Attorney General certifies that the property is directly related to the safety; or
- (4) the Attorney General certifies that the property has been used in violation of this subchapter.

In the event of seizure pursuant to this subsection, proceedings under this section shall be instituted promptly.

Custody

(c) Property taken or detained under this section shall be depletable, but shall be deemed to be in the custody of the Attorney General, subject only to the provisions of this section, by any official having jurisdiction over the property under the provisions of this section.

- (1) place the property in a secure location;
- (2) remove the property from the possession of the person from whom it was seized;
- (3) require that the property be held in custody of the property for disposition in accordance with the provisions of this section.

Other laws

(d) The provisions of this section shall not apply to judicial forfeiture, and to

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Where subsequent statements made by defendant were directly related to information gathered by Drug Enforcement Agency compliance officers as result of legal search of defendant's pharmacy, defendant was entitled to suppression of such statements. U. S. v. Enserro, D.C. Ky. 1975, 401 F.Supp. 460.

Subject

Property subject to forfeiture to the United States in them:

Property which have been manufactured, produced, or imported in violation of this subchapter.

Tools, equipment, and equipment of any kind for use, in manufacturing, commerce, importing, or exporting any property of this subchapter.

Property, or intended for use, as a common carrier in paragraph (1) or (2).

Property of aircraft, vehicles, or vessels, for use, to transport, or in any transaction, sale, receipt, possession, or distribution, described in paragraph (1) or (2),

Property owned or used by any person as a common carrier in business as a common carrier in violation of the provisions of this section unless the owner or other person in possession of the property was a consenting party or privy to the violation of this subchapter or subchapter II of this title.

Property to be forfeited under the provisions of any act or omission established to have been committed or attempted by or for such owner while such property was in the possession of a person in violation of the criminal laws of any State.

Property used, or intended for use, in the manufacture, research, including formulas, mixtures, or preparation, of any controlled substance.

Property, instruments, securities, or other property intended to be furnished by any person in violation of this subchapter.

person in exchange for a controlled substance in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims

(b) Any property subject to forfeiture to the United States under this subchapter may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the United States in a criminal injunction or forfeiture proceeding under this subchapter;

(3) the Attorney General has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the Attorney General has probable cause to believe that the property has been used or is intended to be used in violation of this subchapter.

In the event of seizure pursuant to paragraph (3) or (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly.

Custody of Attorney General

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under the provisions of this subchapter, the Attorney General may—

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it to an appropriate location for disposition in accordance with law.

Other laws and proceedings applicable

(d) The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of

the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this subchapter, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as may be imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this subchapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

Disposition of forfeited property

(e) Whenever property is forfeited under this subchapter the Attorney General may—

- (1) retain the property for official use;
- (2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public;
- (3) require that the General Services Administration take custody of the property and remove it for disposition in accordance with law; or
- (4) forward it to the Drug Enforcement Administration for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General).

The proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs. The Attorney General shall forward to the Treasurer of the United States for deposit in the general fund of the United States Treasury any amounts of such moneys and proceeds remaining after payment of such expenses.

Forfeiture of schedule I substances

(f) All controlled substances in schedule I that are possessed, transferred, sold, or offered for sale in violation of the provisions of this subchapter shall be deemed contraband and seized and summarily forfeited to the United States. Similarly, all substances in schedule I, which are seized or come into the possession of the United States, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the United States.

Plants

(g)(1) All species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this subchapter, or of which the owners or cul-

tivators are unknown, or which are summarily forfeited to the United States.

(2) The failure, upon demand by an authorized agent, of the person in possession of the premises upon which such species of plants are stored, to produce an appropriate receipt for the holder thereof, shall constitute a forfeiture.

(3) The Attorney General, or any person authorized by him, may have authority to enter upon any premises upon which there is a search warrant, to cut, remove, and destroy such plants.

Pub.L. 91-513, Title II, § 511, Oct. 27, 1970, 84 Stat. 1242, and Pub.L. 95-633, Title III, § 301(a), Nov. 13, 1978, 92 Stat. 132, § 14, Nov. 30, 1979, 93 Stat. 132.

Histo

References in Text. "This subchapter" referred to in text, was in the original "this title" which is Title II of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1242, and popularly known as the "Controlled Substances Act". For complete classification of Title II to the Code, see Short Title note set out under section 801 of this title and Tables volume.

"Subchapter II of this chapter" referred to in subsec. (a)(4)(A), was in the original "title III", meaning Title III of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1242. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1104 of Title III, see Tables volume.

The criminal laws of the United States referred to in subsec. (a)(4)(B), are classified generally to Title 18, Crimes and Criminal Procedure.

The Supplemental Rules for Certain Admiralty and Maritime Claims, referred to in subsec. (b), are set out in Title 1, Judiciary and Judicial Procedure.

The customs laws, referred to in subsec. (d), are classified generally to Title 19, Customs Duties.

Schedules I and II, referred to in subsecs. (f) and (g)(1), are set out in section 812(c) of this title.

Codification. "Drug Enforcement Administration" was substituted for "Bureau of Narcotics and Dangerous Drugs" in section 812(c) of this title.

Cr

Contraband articles, including narcotic drugs, transported, see section 781. Narcotic drug defined, see section 781.

such property or the proceeds or mitigation of such forfeitures shall apply to seizures and have been incurred, under the law as applicable and not in- except that such duties as are any other person with respect to property under the customs laws and forfeitures of prop- erties, agents, or other persons for that purpose by the Attorney General. Such duties arise from seizures by an officer.

Real property

under this subchapter the At-

Legal use;

which is not required to be de- manded to the public;

Services Administration take care of it for disposition in accord-

Enforcement Administration for medical or scientific use to regulations of the Attorney

Paragraph (2) and any moneys be used to pay all proper ex- penses and sale including expenses for advertising, and court costs. The Treasurer of the United States of the United States Treasury funds remaining after payment

Controlled substances

Schedule I that are possessed in violation of the provisions of the law and seized and summa- rily. Similarly, all substances in the possession of the Unit- ed States, shall be deemed con- trolled substances in the United States.

Such controlled substances in which have been planted or culti- vated of which the owners or cul-

tivators are unknown, or which are wild growths, may be seized and summarily forfeited to the United States.

(2) The failure, upon demand by the Attorney General or his duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

(3) The Attorney General, or his duly authorized agent, shall have authority to enter upon any lands, or into any dwelling pursuant to a search warrant, to cut, harvest, carry off, or destroy such plants.

Pub.L. 91-513, Title II, § 511, Oct. 27, 1970, 84 Stat. 1276; Pub.L. 95-633, Title III, § 301(a), Nov. 10, 1978, 92 Stat. 3777; Pub.L. 96-132, § 14, Nov. 30, 1979, 93 Stat. 1048.

Historical Note

References in Text. "This subchapter", referred to in text, was in the original "this title" which is Title II of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the "Controlled Substances Act". For complete classification of Title II to the Code, see Short Title note set out under section 801 of this title and Tables volume.

"Subchapter II of this chapter", referred to in subsec. (a)(4)(A), was in the original "title III", meaning Title III of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see Tables volume.

The criminal laws of the United States, referred to in subsec. (a)(4)(B), are classified generally to Title 18, Crimes and Criminal Procedure.

The Supplemental Rules for Certain Admiralty and Maritime Claims, referred to in subsec. (b), are set out in Title 28, Judiciary and Judicial Procedure.

The customs laws, referred to in subsec. (d), are classified generally to Title 19, Customs Duties.

Schedules I and II, referred to in subsecs. (f) and (g)(1), are set out in section 812(c) of this title.

Codification. "Drug Enforcement Administration" was substituted for "Bureau of Narcotics and Dangerous Drugs"

in subsec. (e)(4) to conform to congressional intent manifest in amendment of section 802(4) of this title by Pub.L. 96-132, § 16(a), Nov. 30, 1979, 93 Stat. 1049, now defining term "Drug Enforcement Administration" as used in this subchapter.

1979 Amendment. Subsec. (d). Pub.L. 96-132 substituted "The provisions" for "All provisions", and struck out "and the award of compensation to informers in respect of such forfeitures" following "compromise of claims".

1978 Amendment. Subsec. (a)(6). Pub.L. 95-633, § 301(1), added par. (6).

Subsec. (e). Pub.L. 95-633, § 301(a)(2), (3), struck out of cl. (2) provisions relating to use of proceeds of sale and added provision relating to the forwarding by the Attorney General of money and proceeds remaining after payment of expenses.

Effective Date. Section effective Oct. 27, 1970, see section 704(b) of Pub.L. 91-513, set out as an Effective Date note under section 801 of this title.

Legislative History. For legislative history and purpose of Pub.L. 91-513, see 1970 U.S. Code Cong. and Adm. News, p. 4566. See, also, Pub.L. 95-633, 1978 U.S. Code Cong. and Adm. News, p. 9406; Pub. L. 96-132, 1979 U.S. Code Cong. and Adm. News, p. 2003.

Cross References

Contraband articles, including narcotic drugs, seizure and forfeiture of carriers transporting, see section 781 et seq. of Title 49, Transportation.
Narcotic drug defined, see section 787 of Title 49.

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Pro Family Forum

ADVOCATES FOR GOD, FAMILY AND FREEDOM

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Testimony before the Senate Judiciary Committee

Concerning S.B.114, Mandatory imprisonment for sale of controlled substance to persons under 18.

February 9, 1983

Newsletter Editor
Mrs. Wilba Hopkins
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(913) 764-0637

The Kansas Pro-Family Forum supports this bill for the following reasons .

Legislative Chm.
Mrs. Jan Hoover
Rt. 1 Box 153 I
Perry, KS 66073
(913) 597-5806

1.) It will give our police the incentive to go after and arrest those who sell illegal drugs to our children, with the assurance that the courts would reward their efforts.

Lobbyists:
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Mrs. Alice Fickel
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2.) This bill would reinforce parents arguments that drugs are wrong and against the law, by prosecuting those who sell the drugs. "An ounce" of preventing drugs from reaching the hands of children, "is worth a pound" of drug pervention programs in the schools.

Regional Advisors:
Mr. Bill Duncan (NW)
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Mrs. Mary Jo Heiland (SE)
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Mr. Larry Rink (NE)
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Mr. Clyde Schinnerer (SW)
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3.) This bill would make it plain to the children of this state that pushers will go to jail and that they could be next. At present our children has no fear of retribution, because the sale and use of drugs are rarely linked with legal consequences. This disregard and disrespect of the law could be a factor in increased crime.

If this bill would only stop half of the drug dealers, just how many of our children will be spared the heart-breaking problems of drugs? Lives are being destroyed. Those who are selling

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illegal drugs should be punished accordingly.

Therefore, the Kansas Pro-Family Forum supports S.B.114.

We urge you to discharge this bill from your committee as quickly as possible, and work for its passage.

Mrs. Malinda Irvin

Mrs. Malinda Irvin